

**The Optimal Enforcement
of EC Antitrust Law**
Essays in Law and Economics

Wouter P.J. Wils

The Optimal Enforcement Of Ec Antitrust Lawa Study In Law And Economics European Monographs 33

Wouter P. J. Wils



The Optimal Enforcement Of Ec Antitrust Law A Study In Law And Economics European Monographs 33:

The Optimal Enforcement of EC Antitrust Law: A Study in Law and Economics Wouter Wils, 2002-02-13 This text provides clear answers to the major questions concerning the modernization of EC antitrust enforcement such as should a notification system be maintained or should the antitrust rules be enforced exclusively through deterrence and at what levels should fines be set **Bowker's Law Books and Serials in Print**, 1984 *Public and Private Enforcement of Competition Law in Europe* Kai Hüschelrath, Heike Schweitzer, 2014-08-01 Over the past fifteen years the optimal enforcement of EU competition law has become a major concern This book contains a unique collection of articles by lawyers and economists on current issues in the public and private enforcement of competition law Public enforcement has been strengthened in numerous ways for example through the introduction of a leniency programme and a substantial increase in fines for competition law violations At the same time the EU Commission has been promoting private enforcement for example by developing a legal framework that grants victims of EU antitrust law infringements access to compensation The contributions in this book address a range of topics in the area of competition law enforcement including the role of fines and leniency programmes in public enforcement access to evidence and the quantification of damages in private enforcement and the interaction between public and private enforcement of competition law in Europe Principles of European Antitrust Enforcement Wouter Wils, 2005-02-22 After 1 May 2004 the enforcement of European antitrust law entered a new era At the same time as 10 new Member States joined the European Union Regulation No 17 which had governed the enforcement of Articles 81 and 82 EC since 1962 was replaced by Regulation No 1 2003 which has ushered in far reaching changes This book brings together six essays which analyse the background and main characteristics of the new enforcement system as well as a number of outstanding questions and potential areas of further reform including the question whether private antitrust enforcement should be encouraged and the question whether the decisional power in antitrust matters should be transferred to the courts Special attention is given to the problem of the compatibility of the new enforcement system and of the practice of European antitrust enforcement with the requirements of the European Convention of Human Rights and the Charter of Fundamental Rights of the European Union including the principle of ne bis in idem the privilege against self incrimination and the right to an independent and impartial tribunal On many of these issues the discussion contained in this book is not only legal but also includes an economic analysis from the perspective of efficient law enforcement **Competition Law and Economics** Abel Moreira Mateus, Teresa Coelho Moreira, 2010-01-01 Mateus and Moreira present a formidable review of pressing issues in competition law and economics Top officials judges and experts from Europe and North America offer their insights into analytical issues practical problems for companies enforcers and complainants and on the state of trans Atlantic divergence and convergence The discussion on national champions and state aid is prescient Throughout the analysis is acute cutting edge and deep Officials counsel and scholars will draw from this fabulous book for years to come Philip Marsden British

Institute of International and Comparative Law London UK Competition policy is at a crossroads on both sides of the Atlantic In this insightful book judges enforcers and academics in law and economics look at the consensus built so far and clarify controversies surrounding the issue There is broad consensus on the fight against cartels with some countries criminalizing this type of agreement However there is also wide debate on the questions of monopolization and abuse of dominant position vividly highlighted by the recent Microsoft case Furthermore there are today diverging views on the interplay of business strategies and the control of market power on both a national and international scale The book discusses the perennial issue in Europe of the conflicts between competition and industrial policies once again bringing the theme of national champions to the fore The contributing authors provide opinion on the efforts which have been made towards modernization in both the USA and the EU Featuring new contributions by leading scholars and practitioners in antitrust this book will be a great resource for antitrust enforcers competition lawyers and practitioners and competition economists as well as scholars and graduate students in antitrust and competition law

Comparative Competition Law and Economics Roger J. Van den Bergh, 2017-09-29 Offering a concise and critical comparison of EU competition law and US antitrust law from an economic perspective this is the ideal textbook for international and interdisciplinary courses combining law and economic approaches

Efficiency and Justice in European Antitrust Enforcement Wouter Wils, 2008-02-14 In the last few years the public enforcement of Articles 81 and 82 EC has been thoroughly transformed the competition authorities of the EU Member States have become active enforcers within the European Competition Network the European Commission has imposed more and higher fines than ever before leniency has become a major instrument of cartel detection and some Member States have introduced criminal penalties The overall trend towards more and stronger enforcement of Articles 81 and 82 EC has also rekindled discussion on the old question of how to strike the right balance between efficient enforcement and adequate protection of the rights of the defence This book brings together six essays which analyse from both a legal and an economic perspective the powers of investigation of the European Commission and the competition authorities of the Member States and the corresponding procedural rights and guarantees the use of settlements the theory and practice of fines and of leniency and the criminalization of European antitrust enforcement

The More Economic Approach to EU Antitrust Law Anne C Witt, 2016-11-17 In the late 1990s the European Commission embarked on a long process of introducing a more economic approach to EU Antitrust law One by one it reviewed its approach to all three pillars of EU Antitrust Law starting with Article 101 TFEU moving on to EU merger control and concluding the process with Article 102 TFEU Its aim was to make EU antitrust law more compatible with contemporary economic thinking On the basis of an extensive empirical analysis of the Commission's main enforcement tools this book establishes the changes that the more economic approach has made to the Commission's enforcement practice over the past fifteen years It demonstrates that the more economic approach not only introduced modern economic assessment tools to the Commission's analyses but fundamentally changed the Commission's

interpretation of the law Emulating one of the key credos of the US Antitrust Revolution thirty years earlier the Commission reinterpreted the EU antitrust rules as aiming at the enhancement of economic consumer welfare only and amended its understanding of key legal concepts accordingly This book argues that the Commission s new understanding of the law has many benefits Its key principles are logical translate well into workable legal concepts and promise a great degree of accuracy However it also has a number of serious drawbacks as it stands Most worryingly its revised interpretation of the law is to large extents incompatible with the case law of the European Court of Justice which has not been swayed by the exclusive consumer welfare aim This situation is undesirable from the point of view of legal certainty and the rule of law

Research Handbook on the Law and Economics of Competition Enforcement Kokkoris, Ioannis,Lemus, Claudia,2022-08-16 This incisive Research Handbook identifies and assesses the emerging trends in competition enforcement investigating how such changes impact the enforcement approach of competition authorities and the behaviour of companies in an ever evolving business and regulatory environment *Private Enforcement of EC Competition Law* Jurgen Basedow,Jürgen Basedow,2007-01-01 The European Commission s recent green paper on damages actions for breach of EC antitrust rules stirred a debate across Europe on the need for legal reform that would encourage private plaintiffs to claim compensation for losses suffered as a result of anticompetitive conduct Prominent in the wake of that initiative was the international conference convened by the Max Planck Institute for Comparative and International Private Law in Hamburg in April 2006 the papers and proceedings of which are presented in this important book Among the topics and issues raised and discussed here are the following the 2001 Courage judgment of the European Court of Justice in which the court decided that everyone who suffers losses from a violation of arts 81 or 82 EC is entitled to compensation relevance of the case law that contributes to general principles of European tort law comparative analysis from the more comprehensive experience of national laws in the United States Germany France and Italy calculation of damages passing on of losses sustained in an upstream market to customers in a downstream market procedural devices which may help to overcome the lack of implementation duties of disclosure and the burden of proof collective actions that may help to overcome the rational abstention of individuals pitfalls of leniency programmes implemented by national competition authorities and issues of jurisdiction and choice of law The lively debates that followed the presentations at the conference are also recorded here Although more discussion will be needed before a viable legal framework in this area begins to emerge these ground breaking contributions by lawyers of various disciplines jurists economists academics and European policymakers take a giant step forward For lawyers academics and officials engaged with this important area of international law this book clearly improves our understanding of the economic need and legal particularities which could generate an effective European system of private antitrust litigation *Economic Evidence in EU Competition Law* Mitja Kovač,Ann-Sophie Vandenberghe,2016 The use of economic theory and economic evidence in competition cases their appropriate interpretation

meaning impact usefulness and validity are among the most challenging issues that judges and legal practitioners are facing in their daily decision making. Notorious questions of for example how courts practitioners and other decision making bodies should employ economic evidence and what weight and credibility should be attached to such evidence where different experts offer different suggestions are among the most complex ones. This book while addressing such questions provides tools for judges scholars and legal practitioners to employ economic evidence in a more effective optimal and predictable way so as to overcome the identified EU wide obstacles in enforcing current EU competition law. This edited volume addresses the importance implications practices problems and the role of economic evidence in EU competition law. It includes contributions on the use of the economic approach in the application and enforcement of EU competition law in different EU countries candidate member states and third countries. The book features scholars who are experts in the field of competition law and economics as well as several of the most prominent European judges who provide first hand information on the use of economic evidence in practice. The book is not limited to a particular subfield of competition law but covers the area of competition law at large including state aid. This reflects the fact that also the European Commission has gradually expanded the application of the economic approach to all areas of competition law. What role does economics play in cases of competition law? What role could it play? And what role should it play? But do scholarly experts and judges agree on these viewpoints? In this book an impressive variety of topics is covered and surprising insights are gained. Thus it really covers recent and partly controversial developments in the EU regarding the handling of competition law cases on a national as well as an EU level something experts in the field must not miss. Wolfgang Weigel Chair The Joseph von Sonnenfels Center for the Study of Public Law and Economics and Department of Economics University of Vienna Economics is the study of scarcity Law is the study of rights Unfortunately law and economics scholarship that is practical and focused on problems from the courtroom is scarce. This volume makes it right. It combines the legal experience of experts and judges in several European countries and the rigor of economics. The result is an indispensable tool for anyone interested in EU competition law. Shai Dothan Associate Professor of International and Public Law iCourts the Centre of Excellence for International Courts Faculty of Law University of Copenhagen The rapid growth and increasing importance of EU Competition Law have thrown up in a context of decentralised interpretation and enforcement questions of the extent to which economic theory and evidence should be employed by national authorities. This rich collection of essays provides diverse but also fascinating answers to those questions ranging from the practical and pragmatic to the speculative and theoretical. It is all the more valuable because the authors are drawn from the judiciary as well as the academic world. Clearly the book is essential reading for all concerned with EU Competition Law. Anthony Ogus Emeritus Professor of Law Universities of Manchester and Rotterdam

The Reform of EC Competition Law Ioannis Lianos, Ioannis Kokkoris, 2009-12-16 This book represents a fresh approach to EC competition law one that is of singular value in grappling with the huge economic challenges we face today. As a critical

analysis of the law and options available to European competition authorities and legal practitioners in the field it stands without peer It will be greatly welcomed by lawyers policymakers and other interested professionals in Europe and throughout the world

Competition Law Remedies in Europe Ioannis Lianos, 2013 The fragmentation of EU competition law enforcement in various institutions competition authorities courts and legal provisions Articles 101 102 TFEU merger control have led to the development of ad hoc remedial action without this being backed up by a solid theory of competition law remedies This study aims precisely to fill this gap by providing the first systematic theoretical analysis of competition law remedies in Europe including conduct and structural remedies voluntary and coercive remedies in the areas of merger control and antitrust The study challenges the optimal enforcement theory that seems to have provided so far the intellectual backbone of the remedial action of EU competition authorities although this influence has not been exercised in a systematic and uniform way in all cases Such theory does not provide an adequate understanding of the remedial discretion of competition authorities and consequently the necessary boundaries of such discretion The study provides a novel analytical framework integrating both economic and legal principles taking the view that although deterrence and economic efficiency constitutes an important objective of EU competition law enforcement this should be achieved in the context of established legal understandings of the concept of remedy More specifically the paper examines the impact of the economic approach on the linkage between the competition law wrong and remedies as the foundation for an economically inspired but still respectful to legal tradition concept of remedial discretion in EU Competition Law

The More Economic Approach to EU Antitrust Law Anne Cleino Witt, 2016 Triggers and catalysts The process The agenda A more economic objective A more economic concept of harm A more economic concept of countervailing effects A more economic test A more economic methodology Advantages Compatibility with the case law Other concerns

Competition Law Remedies in Europe Antonio Capobianco, Ioannis Kokkoris, Ioannis Lianos, Assimakis Komninos, 2015-11-01 This volume presents a comprehensive legal and economic analysis of competition law remedies in Europe First it examines the philosophy and overall objectives of competition law remedies and their interaction with the substantive and institutional aspects of competition law enforcement It analyses the impact of specific types of remedies on the emergence of an optimal enforcement system by looking to legal and economic literature case law and empirical research Second it identifies the competition law remedies which have been put into effect in the context of antitrust law enforcement and merger control in Europe In the field of antitrust different issues may arise in devising adequate remedies for cartel infringements antitrust law infringements involving unilateral abuses of market power and infringements involving access to proprietary information or resources In all these cases different types of remedies may be imposed such as contractual remedies damages and behavioural or structural remedies In the context of merger control the prospective nature of the analysis requires the consideration of a number of factors such as the costs of remedial action the probability of compliance the short or long term impact of the remedy the risk of strategic

conduct of the merging parties and the choice of appropriate monitoring and compliance mechanisms on an on going basis for the future The third part of this study examines the procedural implications of injunctions interim measures private action led injunctions measures declaratory actions and procedural administrative issues in public enforcement The fourth part concludes by examining creative remedies and reforms that should be made to the current regime of competition law remedies in Europe It also explores the interaction between competition law remedies adopted by different jurisdictions in a world of multi jurisdictional competition law enforcement from procedural and public policy perspectives

EC Private Antitrust Enforcement Assimakis Komninos, 2008-02-22 This book written by an academic cum practitioner with substantial experience in the field of antitrust enforcement presents the rise of private enforcement of competition law in Europe especially in the context of the recent modernisation and decentralisation of EC competition law enforcement In particular the study examines the role of courts in the application of the EC competition rules and views that role in the broader system of antitrust enforcement The author starts from the premise of private enforcement's independence of public enforcement and after examining the new institutional position of national courts and their relationship with the Court of Justice the Commission and public enforcement in general proceeds to deal with the detailed substantive and procedural law framework of private antitrust actions in Europe The author describes the current post decentralisation state of affairs but also refers to the latest proposals to enhance private antitrust enforcement in Europe both at the Community level where reference is made to the December 2005 Commission Green Paper on Damages Actions and its aftermath and at the national level where reference is made to recent and forthcoming relevant initiatives

Consumer Involvement in Private EU Competition Law Enforcement Maria Ioannidou, 2015-09-03 Despite the growing importance of consumer welfare in EU competition law debates there remains a significant disconnect between rhetoric and reality as consumers and their interests still play only an ancillary role in this area of law Consumer Involvement in Private EU Competition Law Enforcement is the first monograph to exclusively address this highly topical and much debated subject providing a timely and wide ranging examination of the need for more active consumer participation in competition law Written by an expert in the field it sets out a comprehensive framework of policy implications and arguments for greater involvement positioning the debate in the context of a broader EU law perspective It outlines pragmatic approaches to remedial and procedural measures that would enable consumer empowerment Finally the book identifies key institutional and political obstacles to the adoption of effective measures and suggests alternative routes to enhance the role of consumers in private competition law enforcement The book's innovative approach combining normative analysis and practical solutions make it invaluable for academics policy makers and practitioners in the field

Competition Law and Economics Abel Moreira Mateus, Teresa Coelho Moreira, 2007 Everyone recognizes that competition is the process by which companies are induced to offer consumers the lowest prices and introduce innovations to earn higher profits Antitrust enforcement should focus on real competition problems on

behaviour that has actual or likely restrictive effects on the market and which harms consumers it should be aimed at protecting competition and not competitors A real revolution in the application of European competition law took place with the modernization package implemented in the last few years involving the now decentralized application of Articles 81 and 82 EC new merger regulations and the ongoing review of guidelines for the prosecution of abuses of a dominant position This book presents the proceedings of the First Lisbon Competition Law and Economics Conference under the auspices of the Portuguese Competition Authority It was a ground breaking event in which leading European judges and competition enforcers as well as some of the leading world economists and law professors on competition issues took a critical look at the instruments of competition policy conceived to implement EC Regulation 1 2003 with a broader focus on modernization in the EU and in the USA In wide ranging discussions they evaluated theories of harm to competition for the most frequently occurring types of abusive behaviour and developed guidelines for a competition policy that offers both an economically sound framework and a workable and operational tool for making rules that can be enforced effectively and with a reasonable degree of predictability Among the many issues arising in the proceedings recorded in this book are the following special powers of investigation leniency programs and individual sanctions the problem of forum shopping in the present merger regulation system the impact of regulations and competition on economic growth competition and regulatory costs judicial review of the European Commission merger decisions consumer welfare effects of mergers who should apply competition law to utilities and the link between competition and innovation and the development of a country The book will be of immeasurable value to judges academics and economic and law practitioners active in competition policy and enforcement as well as to officials of European national competition authorities Equally interested will be students of law and economics concerned with competition issues and non governmental organizations dealing with consumer protection and private enforcement of competition law By giving ample evidence of the impact of competition and efficient regulation on economic growth this far reaching book will help elucidate the main current topics in need of further reform and underline the importance of competition policy in modern market economies

Non-Competition Interests in EU Antitrust Law

Or Brook, 2022-07-28 This book is the first to empirically examine the role of non competition interests public policy in the enforcement of the EU s prohibition on anti competitive agreements Based on an original quantitative and qualitative database of over 3 100 cases this book records all of the public enforcement actions of Article 101 TFEU taken by the Commission EU Courts and the national competition authorities and courts of five representative Member States France Germany Hungary the Netherlands and the UK The book not only exposes explicit tools in which non competition interests played a role but also sheds light on the dark matter of balancing namely invisible forms of balancing triggered by the institutional and procedural setup of the competition enforcers Moreover it contributes to the empirical legal study of various other aspects of EU competition law enforcement such as its objectives the more economic approach decentralized

enforcement and the functioning and success of Regulation 1 2003 *EU Antitrust Enforcement* Wouter P. J. Wils, 2024-02

EU antitrust enforcement has been radically transformed in the past thirty years Following the decentralisation brought about by Regulation 1 2003 the European Commission now shares the public enforcement of Articles 101 and 102 TFEU with the competition authorities of the EU Member States Public enforcement has furthermore changed through the use of leniency settlements and prioritisation Private antitrust enforcement in particular in the form of follow on actions for damages in cartel cases has significantly increased raising delicate questions as to the optimal balance and interaction between public and private enforcement Increased antitrust enforcement has also brought renewed attention to the procedural rights of defendants and third parties in public antitrust enforcement and the compatibility of the existing enforcement system and practices with the European Convention on Human Rights and the EU Charter of Fundamental Rights Blending legal and economic analysis and drawing on decades of practical experience this book analyses in detail the main questions of law and policy raised by this historical transformation of EU antitrust enforcement and by its current state

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Introduction

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